

IN THE MATTER OF:

MANN BRACKEN LLP

Respondent

* BEFORE THE MARYLAND
* STATE COLLECTION AGENCY
* LICENSING BOARD IN THE
* OFFICE OF THE COMMISSIONER
* OF FINANCIAL REGULATION

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* DFR-FY-2010-216
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SUMMARY ORDER TO CEASE AND DESIST AND
SUMMARY SUSPENSION OF COLLECTION AGENCY LICENSES

WHEREAS, pursuant to the Maryland Collection Agency Licensing Act (or “MCALA,” at Business Regulations Article (“BR”), § 7-101 *et seq.*, Annotated Code of Maryland), the State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter the “Agency”) is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the “State”), and for otherwise enforcing the provisions of MCALA and of the Maryland Consumer Debt Collection Act (“MCDCA,” at Commercial Law Article (“CL”), § 14-201 *et seq.*, Annotated Code of Maryland); and

WHEREAS, at all times relevant to the facts set forth herein, Mann Bracken, LLP, a Delaware limited liability partnership, the continuation by conversion of Mann Bracken, LLC, a Georgia limited liability company, the surviving entity of the merger of Mann Bracken, LLC (f/k/a Mann, Bracken, Layng & Knezo, LLC), Wolpoff & Abramson, LLP, and Eskanos & Adler, PC (hereinafter “Mann Bracken” or “Respondent”), located at Two Irvington Centre, 702 King Farm Boulevard, Rockville, Maryland, has been duly licensed under MCALA as a Maryland collection agency as that term is defined in BR § 7-101(c), holding several

collection agency licenses, with Respondent's licenses including, but not limited to, License Numbers 04-4319 and 04-5306; and

WHEREAS, the Agency finds grounds to allege that Respondent has engaged in, or is engaging in, or is about to engage in, acts or practices constituting violations of MCALA, the MCDCA, and the Fair Debt Collection Practices Act ("FDCPA," at 15 U.S.C. § 1692, *et seq.*), and that action under Financial Institutions Article ("FI"), § 2-115, Annotated Code of Maryland, and State Government Article ("SG"), § 10-226(c)(2), Annotated Code of Maryland, is appropriate.

NOW, THEREFORE, the Agency has determined, for the reasons set forth below, that the public welfare imperatively requires that the Maryland collection agency licenses of the Respondent be immediately suspended; and that it is in the public interest that Respondent immediately Cease and Desist from engaging, directly or indirectly, in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in the collection agency business in the State of Maryland, including but not limited to engaging in any litigation-related collection activities.

1. Pursuant to BR § 7-303(b), in order to be qualified for a license as a collection agency under MCALA, the person must satisfy the Agency of the following:

that the applicant is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

- (1) engage in business as a collection agency;
- (2) warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and
- (3) command the confidence of the public.

2. The grounds for suspending or revoking a Maryland collection agency license is addressed in BR § 7-308, which provides the following:

(a) *In general.*- Subject to the hearing provisions of § 7-309 of this subtitle, the Board may reprimand a licensee or suspend or revoke a license if the licensee or any owner, director, officer, member, partner, or agent of the licensee:

* * *

(3) in connection with the collection of any consumer claim:

(i) commits any fraud; or

(ii) engages in any illegal or dishonest activities;

(4) knowingly or negligently violates the Maryland Consumer Debt Collection Act;

* * *

(b) *Multiple licenses.*- If the Board finds that a ground for suspension or revocation of a license applies to more than 1 place of business that the licensee operates, the Board may act against:

(1) each license of the licensee;

* * *

3. Thus the Agency has the authority to bring actions under MCALA against persons engaged in various prohibited activities in connection with the collection of any consumer claim, including for violations of the FDCPA pursuant to BR § 7-308(a)(3)(ii) (engaging in illegal activities), and for violations of the MCDCA pursuant to BR § 7-308(a)(4). Such authority extends both to litigation-related collection activities, as well as to non-litigation (i.e. “traditional”) collection activities.

4. Pursuant to CL § 14-202 of the MCDCA, “[i]n collecting or attempting to collect an alleged debt,” a collection agency (“collector”) may not: “(8) [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.”

5. The FDCPA provides, in relevant part, as follows:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

* * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

* * *

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

* * *

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or

a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector

* * *

6. On January 4, 2010, the Agency began an investigation of Respondent Mann Bracken after being contacted by consumers who complained of being unable to contact Mann Bracken in response to Respondent's previous collection activities, including consumers who were unable to make payments to the Respondent pursuant to prior payment arrangements. The Agency was also contacted by the Consumer Protection Division of the Office of the Attorney General, which had also begun receiving similar complaints indicating that Respondent Mann Bracken was no longer in business, and that Respondent had stopped cashing checks that had been sent to Respondent for collection-related matters. The Agency subsequently attempted to contact Respondent at the contact numbers which Respondent had previously provided to the Agency, but such efforts were unsuccessful as these contact numbers had all been disconnected. Based on the above, the Agency concluded that Mann Bracken had stopped all regular business operations at Two Irvington Centre, 702 King Farm Boulevard, Rockville, Maryland.

7. On January 4, 2010, the Agency became aware of a form letter dated January 1, 2010 from Scott Kramer, Esq., a partner with Respondent Mann Bracken, addressed to "Clerk of Court, Civil Division, District Court of Maryland," with no specific mailing or street address indicated, which stated the following:

To Whom It May Concern:

This letter is to advise the court that the Law Offices of Mann Bracken, LLP will be closing at the end of this month. We are working with our clients to transfer all of our cases to

new counsel as quickly as possible. However, we also anticipate that complete resolution of every single case may be a practical improbability.

We bring this to your attention because it is likely that dismissals, judgments, and substitutions of attorney may not be filed in every case before the next hearing. Therefore, we respectfully request a stay of proceedings for a period of sixty (60) to ninety (90) days or that the court dismiss the matter without prejudice. We further respectfully request that if any contested case comes up for hearing and no one appears, that the court set an order to show cause, with 60 to 90 days notice, why the case should not be dismissed, to allow time for substitution of counsel or dismissal to be filed; and that if no one appears at the order to show cause hearing, that the case be dismissed without prejudice and without sanctions.

8. Respondent's January 1, 2010 letter did not provide a listing of specific cases in which attorneys from Respondent Mann Bracken were listed as the attorneys of record for various plaintiffs in collection-related court cases. Instead, Respondent's letter puts the burden on the Maryland State district courts to determine which specific cases are impacted by this request. However, based on a prior related investigation, the Agency has reason to believe that attorneys from Respondent Mann Bracken are listed as attorneys of record in tens of thousands of active cases Maryland State district courts.

9. Additionally, during the first week in January, 2010, attorneys employed by Respondent filed motions in various cases in Maryland State district courts entitled "Plaintiff's Emergency Motion to Stay Proceedings, Cancel or Continue Hearing and Trial Dates, and For Other Relief," which stated, in part, as follows:

1) Due to the bankruptcy filing by the company that provides computer, phone, staffing, and almost all other support services to its law offices, Plaintiff's current counsel Mann Bracken LLP does not have the resources necessary to handle and pursue pending litigation, and is in the process of winding down all legal business operations.

2) As a consequence, Plaintiff is currently seeking substitute counsel to enter their appearance in the instant case and numerous other cases throughout the country.

10. The Agency again attempted to contact the Respondent at the telephone numbers listed on the correspondence from Respondent to the district courts, described above. However, such efforts were unsuccessful as all of the listed telephone numbers had been disconnected.

11. The Agency's investigation of this matter further revealed that the support services company referenced in Respondent's court filings (*see* paragraph 8, above), is Axiant, LLC (a/k/a MB Solutions LLC), a Delaware limited liability company based in Huntersville, North Carolina (hereinafter "Axiant"). The Agency's investigation also revealed the following: that Axiant was formed in 2007 through the consolidation of the non-legal operations of three large debt collection law firms – Mann Bracken, LLC, Wolpoff & Abramson, LLP, and Eskanos & Adler, PC – the same law firms whose legal operations merged into what eventually became Respondent Mann Bracken; that Axiant voluntarily filed for Chapter 11 bankruptcy protection in Delaware on November 20, 2009 in order to effectuate a sale of its assets to NCO Group, Inc. for between \$7 and \$10 million; that NCO Group notified Axiant on December 7, 2009, that it would no longer pursue the acquisition of Axiant's assets; that Axiant was subsequently unable to sell its assets to other prospective buyers; that on December 28, 2009, the federal bankruptcy court converted Axiant's bankruptcy from a Chapter 11 to a Chapter 7 liquidation; and that Axiant's bankruptcy filing lists Mann Bracken, LLP as the largest unsecured creditor of Axiant, with the value of Mann Bracken's unsecured claim against Axiant valued at \$10,561,063 (more than 10 times greater

than that of any other listed creditor). It appears likely that these events, associated with Axiant's bankruptcy, precipitated the closing of Mann Bracken.

12. Based on the foregoing, the Agency has reasonable grounds to conclude that Respondent Mann Bracken no longer satisfies the requirements to be licensed as a collection agency in Maryland pursuant to BR § 7-303(b), as its activities no longer demonstrate the financial responsibility or general fitness sufficient to engage in business as a collection agency or to warrant the belief that Respondent's business will be conducted lawfully, honestly, fairly, and efficiently. Based on its own correspondence, it appears that the Respondent does not have the resources necessary to continue the litigation-related collection proceedings that it had already commenced, that it does not have access to the electronic or paper files related to the consumer debts at issue, that it does not have the support staff or equipment necessary to engage in non-litigation related collection activities, including validating debts when requested by consumers, and that it will be unable to service current agreements with consumers on behalf of creditors or respond to any communications from consumers concerning any alleged debts.

13. The correspondence from Respondent Mann Bracken to the Maryland State courts are procedurally defective and fail to comply with the Maryland Rules of Civil Procedure in numerous ways, not the least of which is Respondent's failure to provide sufficient notice to the opposing parties (i.e. to the consumer defendants) about Respondent's proposed course of action, which focuses on requesting 60-90 stays in all active cases. These litigation-related collection activities thus constitute false or misleading representations and unfair practices in violation of 15 U.S.C. §§ 1692e and 1692f, respectively, of the FDCPA. By the same rationale, Respondents violated CL § 14-202(8) of the MCDCA.

14. Further, it is clear that Respondent's inaccessibility to the public, to the Agency, to the courts, and to opposing parties and counsel means that the Respondent will be unable to properly respond to communications or to otherwise act in good faith towards Maryland residents, as required under various provisions of the FDCPA, the MCDCA, and MCALA.¹ This applies both to Respondent's litigation-related collection activities, as well as to its traditional collection activities. For example, Respondent will be unable to comply with proper discovery requests in collection-related cases in violation of the Maryland Rules of Civil Procedure, and thus in violation of 15 U.S.C. § 1692f, and Respondent will be unable to validate debts upon receiving timely requests from Maryland consumers, in violation of 15 U.S.C. § 1692g.

15. The above-referenced knowing and willful violations of MCALA, the MCDCA, and the FDCPA in connection with the collection of consumer claims constitute grounds for revocation of the collection agency licenses of Respondent under BR §§ 7-308(a)(3)(ii), 7-308(a)(4), and 7-308(b) of MCALA, and also subjects Respondent to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by Commissioner of Financial Regulation on behalf of the Agency, **HEREBY**

¹ Although outside the scope of the current action, it also appears that Respondent's inaccessibility to the courts and to opposing parties and counsel may put those partners and employees of the Respondent who are duly licensed to practice law in Maryland in violation of various provisions of the Maryland Lawyers' Rules of Professional Conduct, including but not limited to Rule 3.2 (Expediting litigation), Rule 3.3 (Candor Toward the Tribunal), and Rule 3.4 (Fairness to Opposing Party and Counsel).

ORDERED that, pursuant to SG § 10-226(c)(2), all collection agency licenses of Respondent Mann Bracken are SUMMARILY SUSPENDED effective immediately, and that Respondent shall immediately suspend all collection activities in the State of Maryland, which shall include but is not limited to suspending all collection-related actions in Maryland State courts and refraining from filing any further collection-related actions, with the exception that Respondent may file motions or take other legally permissible actions for the following limited purposes: dismissing current court cases; transferring representation of clients to other counsel; or transferring collection files to other duly licensed collection agencies; it is further

ORDERED that, pursuant to FI § 2-115(a), Respondent shall immediately CEASE AND DESIST from violating the aforementioned laws governing debt collection activities; and that Respondent should be assessed statutory monetary penalties for all such violations; and it is further

ORDERED that all provisions of this Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses ("Summary Order"), including all Orders and Notices set forth herein, also apply to all unnamed owners, partners, members, officers, employees, and agents of the Respondent; and it is further

ORDERED that the Resident Agent for the Respondent shall provide a copy of this Summary Order to all unnamed owners, partners, members, officers, employees and agents of the Respondent.

FURTHERMORE,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, Respondent is entitled to a hearing before the Agency to determine

whether this Summary Order should be vacated, modified, or entered as a final Order of the Agency; and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, this Summary Order will be entered as a final Order of the Agency if Respondent does not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to State Government Article (“SG”) § 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at the Respondent’s own expense; and further,

RESPONDENT IS HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Administrator, State Collection Agency Licensing Board
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;


and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to BR § 7-308, the foregoing violations provide a basis upon which the Agency may suspend or revoke Respondent Mann Bracken’s Maryland collection agency licenses. Pursuant to BR § 7-205, the Agency may also issue an order requiring the Respondent to cease and desist from engaging in these violations and any further similar violations, may issue a monetary penalty of up to \$5,000, and may require Respondent to take affirmative action to correct the

violations, including providing restitution to any aggrieved consumers. Additionally, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondent's failure to timely request a hearing in the manner described above, the Commissioner of Financial Regulation, may, in addition to taking any other action authorized by law, enter an Order making this Summary Order final, revoke the collection agency licenses of Respondent, impose a civil penalty against the Respondent up to \$1,000 for each violation of the above-referenced collection agency laws, issue a penalty up to \$5,000.00 for each subsequent violation of these laws, or may take any combination of the aforementioned actions against Respondent.

MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER OF
FINANCIAL REGULATION

1/11/10
Date


By: Mark Kaufman
Deputy Commissioner of Financial
Regulation

For Sarah Bloom Raskin
Commissioner of Financial Regulation
Chairperson, State Collection Agency
Licensing Board